

ASSEMBLY BILL

No. 1183

Introduced by Assembly Member Wilk

February 27, 2015

An act to amend Section 6456 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1183, as introduced, Wilk. Sales and use taxes: deficiencies: judgment of dissolution of marriage.

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state.

Existing law also sets forth the liability of marital property that is held as community property, including providing that the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

This bill would, notwithstanding those laws governing the liability of marital property, relieve a spouse of an unpaid sales or use tax or deficiency of that tax, if the other spouse has the sole obligation arising from a judgment of dissolution of marriage to pay the unpaid tax or a deficiency, or any portion of either.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6456 of the Revenue and Taxation Code is amended to read:

6456. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to

1 one spouse” may be determined by whether a spouse rendered
2 substantial service as a retailer of taxable items to which the
3 understatement is attributable. If neither spouse rendered substantial
4 services as a retailer, then the attribution of applicable items of
5 understatement shall be treated as community property. An
6 erroneous deduction or credit shall be attributable to the spouse
7 who caused that deduction or credit to be entered on the return.

8 (f) Under procedures prescribed by the board, if, taking into
9 account all the facts and circumstances, it is inequitable to hold
10 the other spouse liable for any unpaid tax or any deficiency (or
11 any portion of either) attributable to any item for which relief is
12 not available under subdivision (a), the board may relieve the other
13 spouse of that liability.

14 (g) *Notwithstanding Part 3 (commencing with Section 900) of*
15 *Division 4 of the Family Code, if a spouse has the sole legal*
16 *obligation to pay the unpaid tax or a deficiency, or any portion of*
17 *either, the other spouse shall be relieved of that unpaid tax or*
18 *deficiency. For purposes of this subdivision, a legal obligation*
19 *means an obligation arising from a judgment of dissolution of*
20 *marriage.*